

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

RANDY JOE BOWEN,

Plaintiff,

Case No. 3:23-cv-375

vs.

SIDNEY POLICE DEPARTMENT, *et al.*,

District Judge Michael J. Newman

Magistrate Judge Karen L. Litkovitz

Defendants.

**ORDER: (1) ADOPTING THE REPORT AND RECOMMENDATION OF THE
MAGISTRATE JUDGE (Doc. No. 5); AND (2) DISMISSING WITH PREJUDICE ALL
OF PLAINTIFF'S CLAIMS WITH THE EXCEPTION OF HIS CLAIM THAT
DEFENDANT SYDNEY POLICE OFFICERS HAYDEN BRONNE, JOSEPH KENNEDY,
AND JORDAN FOX, IN THEIR INDIVIDUAL CAPACITIES, USED EXCESSIVE
FORCE DURING HIS ARREST IN VIOLATION OF PLAINTIFF'S RIGHTS UNDER
THE FOURTH AMENDMENT OF THE CONSTITUTION**

The Court has reviewed the Report and Recommendation of United States Magistrate Judge Karen L. Litkovitz (Doc. No. 5) to whom this case was referred pursuant to 28 U.S.C. § 636(b), and notes that no objections were filed thereto and the time for filing such objections under Fed. R. Civ. P. 72(b) has expired. Upon careful consideration and review, the Court finds that the Report and Recommendation sets forth the applicable law, cogently applies it to Plaintiff's *pro se* complaint, and reaches correct conclusions. Doc. No. 5 at PageID Nos. 85-96. Therefore, the Court hereby (1) **ADOPTS** the Report and Recommendation; (2) **DISMISSES WITH PREJUDICE** all of Plaintiff's claims with the exception of his claim that Defendant Sydney Police Officers Hayden Bronne, Joseph Kennedy, and Jordan Fox, in their individual capacities, used excessive force during Plaintiff's arrest in violation of his rights under the Fourth Amendment of the Constitution.

No appeal is presently available in this case because this Order is not a final appealable order and some of Plaintiff's claims remain pending. *See* 28 U.S.C. § 1291, *cf. Sultaana v. Jerman*, No. 1:15-cv-382, 2020 WL 13889761, at *5 (N.D. Ohio Jan. 7, 2020) (quoting *Cleaver v. Elias*, 852 F.2d 266, 267 (7th Cir. 1988) (“An appeal is possible in the absence of [a Rule 58 final judgment] only if the district court has clearly disposed of all pending matters”)). Because of this and for the reasons set forth herein, the Court **CERTIFIES**, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal of this Order would not be taken in good faith, and consequently, **DENIES** Plaintiff leave to appeal this Order *in forma pauperis*.

IT IS SO ORDERED.

May 22, 2024

s/Michael J. Newman
Hon. Michael J. Newman
United States District Judge